



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY 201537031  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

JUN 18 2015

Uniform Issue List: 402.00-00

SE: T. EP. RA: T1

Legend:

Taxpayer A =

Company B =

Plan C =

Financial Institution D =

Company E =

Plan F =

Financial Institution G =

Amount 1 =

Amount 2 =

Amount 3 =

Dear :

This letter is in response to your correspondence, dated April 8, 2015, in which you request a waiver of the 60-day rollover requirement contained in section 402(c)(3)(B) of the Internal Revenue Code ("Code"), regarding the distribution of Amount 3 from Plan C.

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

Taxpayer A represents that she received a distribution of Amount 3 from Plan C. Taxpayer A asserts that her failure to accomplish a rollover of Amount 3, within the 60-day period prescribed by section 402(c)(3) was due to incorrect advice provided by Financial Institution D. Taxpayer A further represents that Amount 3 has not been used for any purpose.

Taxpayer A was employed by Company B and participated in its qualified retirement plan (Plan C). The custodian and administrator of Plan C was Financial Institution D. Taxpayer A resigned from Company B, on February 11, 2013, and went to work for Company E. After completing the service requirement, Taxpayer A began participating in Company E's retirement plan (Plan F). In April, 2014, Taxpayer A decided to roll over her account balance (Amount 1) in Plan C to Plan F. She discussed the intended transaction with a representative of Financial Institution D who informed her she was required to use online procedures. She asserts that she, to the best of her understanding and ability, followed his instructions in performing the rollover online. She received a check dated April 28, 2015, for Amount 2 (Amount 1 less federal and states taxes of Amount 3). On May 5, 2014, she mailed the check for Amount 2 to Financial Institution G, the administrator of Plan F. Amount 2 was reflected as a proper rollover contribution in Taxpayer A's May 31, 2014 monthly statement for Plan F.

Taxpayer A intended to roll over her full account balance (Amount 1) in Plan C. She felt she would accomplish this if she followed the instructions provided by the representative of Financial Institution D. Taxpayer A represents that she, in good faith, relied on what he told her and assumed the full account balance (Account 1) would be rolled over. However, she was distracted by the demands of her new job and never noticed that federal and state taxes (Amount 3) had been withheld from the check for Amount 2. The mistake was not discovered until 2015, when Taxpayer A's father, while preparing her 20 tax returns, determined from Form 1099-R that the federal and state taxes totaling Amount 3 had not been rolled over to Plan F.

Based on the above facts and representations, you request that the Internal Revenue Service ("Service") waive the 60-day rollover requirement contained in section 402(c)(3)(A) of the Code with respect to the distribution of Amount 3.

Section 402(c) of the Code provides that if any portion of the balance to the credit of an employee in a qualified trust is paid to the employee in an eligible rollover distribution, and the distributee transfers any portion of the property received in such distribution to an eligible retirement plan, and in the case of a distribution of property other than money, the amount so transferred consists of the property distributed, then such distribution (to the extent transferred) shall not be includible in gross income for the taxable year in which paid. Section

402(c)(3)(A) of the Code states that such rollover must be accomplished within 60 days following the day on which the distributee received the property. An individual retirement account (IRA) constitutes one form of eligible retirement plan.

Section 402(c)(4) of the Code provides that an eligible rollover distribution shall not include any distribution to the extent such distribution is required under section 401(a)(9).

Section 402(c)(3)(B) of the Code provides, in relevant part, that the Secretary may waive the 60-day requirement under section 402(c) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 402(c)(3)(B) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to sections 408(d)(3)(I) and 402(c)(3)(B) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and the documentation submitted by Taxpayer A is consistent with her assertion that her failure to accomplish a timely rollover of Amount 3 was due to their reliance on the incorrect advice by Financial Institution D.

Therefore, pursuant to section 402(c)(3)(B) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount 3 from Plan C. Taxpayer A is granted a period of 60 days from the issuance of this letter ruling to contribute no more than Amount 3 into an eligible retirement plan or rollover IRA. Provided all other requirements of section 402(c)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, the contribution will be considered a rollover contribution within the meaning of section 402(c)(3) of the Code.

This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

If you wish to inquire about this ruling, please contact (I.D. #  
) , at ( ) .

Sincerely yours,

*Carlton A. Watkins*

Manager  
Employee Plans Technical Group 1

Enclosures:

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